IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1145 of 2006.

Date of decision: 24.4.2007

Vinod Kumar & others ..Petitioners

Versus

Bank of India & another. ….Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting?

For the Petitioners: Mr. N.K.Thakur, Advocate.

For Respondents : Mrs. Devyani Sharma, Advocate.

Per Deepak Gupta, J (Oral)

The petitioners have challenged the notices, annexture P-1 and P-2, issued to him under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The brief facts of the case are that the petitioners have obtained two housing loans and one mortgage loan from the respondent-Bank. It is also admitted case that the amount due to the Bank has not been paid. The Bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, whereby the petitioner was called upon to repay the loan amount alongwith interest within 60 days, failing which the properties would be taken over by the Bank. In fact, the properties were taken over by the Bank.

On 30.11.2006 when this writ petition came up before this Court, it was ordered that in case the petitioners deposits a sum

of Rs. One Lac their prayer for grant of interim order will be considered. On 8.12.2006 when the matter was again taken up, there was evidence to show that the petitioners had deposited a sum of Rs. One Lac. By way of interim order, this Court directed the respondents to open the locks of the peitioners' house and shop and hand over the possession thereof to the petitioners. This was admittedly done. After hearing the parties on 11.1.2007, an order was passed that the petitioners should file the rejoinder but should also satisfy this Court that the amount which is due by them to the Bank and has been paid to the respondent-Bank. It was made clear that only if the Court was satisfied that this amount has been paid, the further prayer of the petitioners would be considered. Admittedly, this amount was not deposited and on 21.3.2007 interim orders were vacated. The possession of the house and shop must obviously now be with the Bank.

This Court has been quite indulgent to the petitioners and given them a number of opportunities to pay the loan amount. Section 17 of the Act provides a right of appeal to the person aggrieved against any order. This right of appeal is also available to the petitioners.

In the facts and circumstances of the case, we feel that this is not a fit and proper case where we should exercise our extraordinary writ jurisdiction when there is an efficacious alternative remedy available to the petitioners.

The writ petition is dismissed. No costs.

(Deepak Gupta), J.

April 24, 2007 (Surinder Singh), J.
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